

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>IN RE: INTER-OP HIP PROSTHESIS LIABILITY LITIGATION</b>	<b>: : : : : :</b>	<b>MDL Docket No. 1401  JUDGE O'MALLEY  ORDER</b>
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Currently pending are the following motions: (1) motion by proposed class counsel for conditional class certification, and for preliminary approval of the proposed class settlement agreement (docket no. 14); (2) motion by defendant Sulzer Orthopedics, Inc. for preliminary approval of the proposed class settlement agreement (docket no. 12); (3) motion by defendants Sulzer Medica Ltd. and Sulzer Orthopedics Ltd. for preliminary approval of the proposed class settlement agreement (docket no. 13); and (4) motion to add additional class counsel (docket no. 18).

These motions are all **GRANTED**, to the following extent:

C the Court conditionally certifies a settlement class, pursuant to Fed. R. Civ. P. 23(b)(2) and (b)(3), defined as follows: “All citizens or residents of the United States who have had Affected Inter-Op acetabular shell hip implants placed in their bodies, together with their associated consortium

claimants.”<sup>1</sup> Further, this class shall be divided into two subclasses, as follows: Subclass 1 shall consist of those class members who undergo revision surgery prior to the Final Judicial Approval Date to correct problems with the Affected Inter-Op shells, and their associated consortium claimants. Subclass 2 shall consist of class members who may need to undergo revision surgery after the Final Judicial Approval Date to correct problems with the Affected Inter-Op shells, and their associated consortium claimants.<sup>2</sup>

C the Court preliminarily approves the proposed class settlement agreement, pursuant to Fed. R. Civ. P. 23(e), conditioned upon the submission of an amended proposed class settlement agreement, within 10 days of the date of this Order, that: (1) does not purport to settle claims related to the implantation of “Natural Knee Tibial Baseplates;” (2) incorporates the revisions referred to in docket no. 50 (“Revisions to the Class Action Settlement Agreement”); and (3) clarifies “Article 8” of the agreement to accurately recite how subrogation claims will be treated, as explained in open court during the August 28, 2001 preliminary fairness hearing.

C the following persons are hereby preliminarily appointed as class co-counsel: (1) John R. Climaco, of Climaco Lefkowitz Peca Wilcox & Garofoli (Cleveland, Ohio); (2) R. Eric Kennedy, of Weisman,

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<sup>1</sup> In this context, the term “Affected Inter-Op acetabular shell hip implants” means the Inter-Op Acetabular shells identified in the Safety Alert issued by Sulzer Orthopedics, Inc., dated December 5, 2000, and also certain other Inter-Op Shells machined after porous coating, all of which will be identified with particularity by the parties to the proposed settlement agreement.

<sup>2</sup> In this context, the term “Final Judicial Approval Date” means the date (if any) on which this Court’s approval of the proposed settlement agreement becomes final by the exhaustion of all appeals.

Goldberg & Weisman (Cleveland, Ohio); (3) Donald Barrett, of Barrett Law Office, P.A. (Lexington, Mississippi); (4) Keith M. Fleischman, of Milberg Weiss Bershad Hynes & Lerach, LLP (New York, New York); (5) Richard S. Wayne, of Strauss & Troy) (Cincinnati, Ohio); (6) Stanley M. Chesley, of Waite, Schneider, Bayless & Chesley Co. LP (Cincinnati, Ohio); (7) Wendell H. Gauthier, of Gauthier, Downing, LaBarre, Beiser & Dean (Metairie, Louisiana); and (8) Daniel E. Becnel, Jr., of The Law Offices of Daniel E. Becnel, Jr. (Reserve, Louisiana). Furthermore, Subclass 1 shall be separately represented by Mr. Kennedy, and subclass 2 shall be separately represented by Mr. Wayne.

**This Order constitutes a preliminary statement of the Court's rulings. The Court will set forth the reasons for its Order in a separate opinion, to be issued shortly.** At that time, the Court will also schedule a final fairness hearing and set forth procedures and a timeline for: (1) notice to the class; (2) discovery as to issues relating to the propriety and fairness of the settlement; and (3) the filing of objections or comments in support of the settlement. Finally, the Court will pinpoint aspects of the settlement which it believes need to be explored more fully, both in discovery and through the final fairness hearing.

**IT IS SO ORDERED.**

s/Kathleen M. O'Malley  
**KATHLEEN McDONALD O'MALLEY**  
**UNITED STATES DISTRICT JUDGE**